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June 24, 2021

BY ECF

The Honorable J. Paul Oetken
United States District Judge for the
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: Hay v. New York Media LLC, et al., No. 1:20-cv-06135 (JPO)

Dear Judge Oetken:

Defendants filed a surreply on June 17, 2021 at ECF 39. Defendants adverted to a recent opinion regarding a defamation claim as to the articles involved in this action. That opinion discusses the intent state of gross irresponsibility as an element of a defamation action, and the First Amendment public interest defense. The relationship of these issues to the breach of contract claim in the present action is unclear. A notice of appeal may yet be filed and there are several viable points of error. In any event, the Defendants' arguments constitute an improper surreply that should not be considered on the present motion. Rather than engage in an extended argument on these issues without Court permission, Plaintiff simply notes that neither the Federal Rules of Civil Procedure nor the Local Civil Rules of this Court authorize litigants to file surreplies. Allowing such filings has the potential for placing a court in the position of refereeing an endless volley of briefs. *Kapiti v. Kelly*, 2008 WL 754686, at *1 (S.D.N.Y. 2008), *aff'd*, 2008 WL 1882652 (S.D.N.Y. 2008). The filing should be considered nugatory.

Respectfully submitted,

/s/ Jillian T. Weiss

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